



November 17, 2014

Ex Parte

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265

Dear Ms. Dortch:

On November 13, 2014, Kathleen Grillo, Tamara Preiss, and Andy Lachance of Verizon met with Renee Gregory, Legal Advisor to Chairman Tom Wheeler, and Leah Rabkin to discuss issues in the above-referenced proceeding.

We discussed the petition for declaratory ruling filed by T-Mobile that asks the Commission to change its rules to determine the commercial reasonableness of a wireless provider's data roaming rates by reference to that carrier's retail, resale, and international and domestic roaming rates.¹ We explained that the existing roaming framework adopted by the FCC – voluntary negotiations backstopped by a complaint process – is working as intended. Carriers are negotiating and entering into data roaming agreements; in the three years since the FCC's order, Verizon Wireless and its 59 roaming partners, including dozens of rural carriers, have executed 48 new or revised roaming agreements. And carriers are negotiating commercially reasonable roaming rates. For example, Verizon has agreed to reciprocal roaming rates in nearly all of its agreements and Verizon pays its roaming partners more than it receives in roaming revenue in the majority of them. These facts refute the claims of some commenters that large carriers lack incentives to negotiate commercially reasonable rates. Indeed, the average rates that Verizon Wireless charges for data roaming have declined more than 40 percent in the last three years, a fact acknowledged by T-Mobile's own economist.²

As a result, we stated that the relief T-Mobile seeks in its petition is unnecessary and unwarranted. There is no evidence to suggest that carriers will not continue to negotiate data roaming

¹ Petition for Expedited Declaratory Ruling of T-Mobile, USA, Inc., WT Docket No. 05-265 (filed May 27, 2014) ("*T-Mobile Petition*").

² *T-Mobile Petition* at Exhibit 2, Declaration of Joseph Farrell, at 17.

agreements with commercially reasonable rates, terms and conditions. In fact, developments in the roaming market suggest the contrary. When providers used only CDMA or GSM/UMTS technology, they were often limited to roaming partners that offered the compatible technology. As the industry has evolved to a common LTE technology and providers incorporate more LTE bands into their handsets, the universe of roaming providers has expanded, erasing the historic distinction between the CDMA and GSM/UMTS ecosystems. For example, some CDMA operators like Verizon Wireless may enter into roaming agreements with GSM/UMTS and LTE operators, and some GSM/UMTS operators may enter into LTE agreements with traditional CDMA carriers. Greater opportunities for negotiations of data roaming agreements among a variety of carriers will lead to a more diverse and robust market for roaming services going forward. In short, there is no problem in the roaming market that the Commission needs to “fix.”

The only specific claim of market failure in T-Mobile’s petition is its allegation that AT&T has failed to make data roaming available at commercially reasonable rates, a claim that AT&T disputes. The FCC has an established complaint process in which T-Mobile can pursue its dispute with AT&T.³ We stated that if T-Mobile brings such a complaint, it will have the opportunity to try to demonstrate that the roaming rates offered by AT&T are unreasonable. We also stated that T-Mobile cannot credibly challenge the adequacy of the complaint process if it has not taken advantage of it.

We also explained that the benchmarks T-Mobile seeks are neither necessary nor appropriate. Retail and resale rates are irrelevant to the reasonableness of roaming rates. The most relevant rate comparison for evaluating the commercial reasonableness of roaming rates is other, voluntarily-negotiated roaming rates. Because a complaint proceeding enables a party to discover and produce evidence of roaming rates in its own and other parties’ agreements, there is no need for the FCC to examine retail or resale rates. Moreover, given that the FCC already rejected those rates as benchmarks for commercial reasonableness, T-Mobile’s petition is an attempt to change the Commission’s existing rules and thus cannot be addressed through a declaratory ruling.⁴

Finally, we discussed the policy implications of the relief T-Mobile seeks. In the *Data Roaming Order*, the Commission sought to strike a balance between facilitating data roaming and preserving

³ See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Comments of Verizon (filed July 10, 2014), at 1-4; Reply Comments of Verizon (filed Aug. 20, 2014), at 5-9.

⁴ See Comments of Verizon at 4-7; see also Reply Comments of Broadpoint, LLC, Central Louisiana Cellular, LLC, and Texas 10, LLC (filed Aug. 20, 2014) (“*Cellular One Carriers Reply Comments*”), at 2 (noting “valid economic reasons” that roaming rates do not reflect the same factors as retail, resale, and foreign rates). T-Mobile itself shared this view not too long ago. See Letter from Kathleen Ham, T-Mobile, to Marlene Dortch, Secretary, FCC, WT Docket No. 05-265 (filed May 31, 2006), at 2 (“the record demonstrates it would be foolhardy to adopt a cap or benchmark for roaming rates based on end user rates or revenues because there is no direct relationship between those rate levels”)(cited in *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Comments of T-Mobile USA, Inc. (filed July 14, 2010), at 21 n.70).

providers' incentives to invest in network infrastructure. Recognizing "the possibility that requesting providers will substitute roaming for investment in coverage and accordingly under-invest in deploying new infrastructure," the Commission observed that "the relatively high price of roaming compared to providing facilities-based service" should offset the "incentive to 'piggy back' on another carrier's network."⁵ Providers should continue to be free to negotiate data roaming rates that preserve incentives for network build-out. As the Cellular One Carriers explain, given the Commission's interest in deployment of broadband in rural areas, it should not "[i]mpair[] the ability of the carriers that serve such areas to negotiate fair rates...[which] can only serve to negatively impact their ability to continue to do so."⁶

This letter is being filed pursuant to Section 1.1206 of the Commission's Rules. Should you have any questions, please contact the undersigned.

Sincerely,



cc: (via e-mail)

Renee Gregory

⁵*Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Second Report and Order, 26 FCC Rcd 5411 (2011) ("Data Roaming Order"), at ¶¶ 21, 34.

⁶ *Cellular One Carriers Reply Comments* at 3.